

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ADELE ALTIMARI,

Plaintiff,

v.

BUCKS COUNTY RAILROAD
PRESERVATION AND RESTORATION
CORP. d/b/a NEW HOPE & IVYLAND
RAILROAD et al.,

Defendants.

CIVIL ACTION
NO. 21-2451

ORDER

AND NOW, this 31st day of May 2022, upon consideration of the Complaint (Doc. No. 1), Defendants' Motion to Dismiss for Failure to State a Claim and for a More Definite Statement (Doc. No. 3), Plaintiff's Response in Opposition (Doc. No. 5), Defendants' Reply (Doc. No. 6), and in accordance with the Opinion of the Court issued on this date, it is **ORDERED** that Defendants' Motion to Dismiss (Doc. No. 3) is **GRANTED** in part and **DENIED** in part as follows:

1. Defendants' Motion to Dismiss based on the affirmative defense of preemption is **GRANTED** in part. Counts II, III, IV, and V of the Complaint (Doc. No. 1) are preempted by the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. §§ 10101 *et seq.*, only to the extent that they are based upon allegations of "unfettered loud noises, fumes, pollution, and debris" from Defendants' Rail Facility.
2. Defendants' Motion to Dismiss Counts II, III, IV, and V of the Amended Complaint for Failure to State a Claim under state law is **DENIED**.

3. Defendants' Motion to Dismiss Plaintiff's claim for Punitive Damages is **DENIED**.
4. Defendants' Motion for a More Definite Statement is **DENIED**.
5. Defendants shall file an Answer to Plaintiff's Complaint (Doc. No. 1) within 14 days of the date of this Order.

BY THE COURT:

/s/ Joel H. Slomsky
JOEL H. SLOMSKY, J.